



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31728489

Date: JUL. 24, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a visual artist and contends he has sustained national and international acclaim. Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied six of these criteria, summarized below:

- (i), documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (iii), published material about the individual in professional or major media
- (v), original contributions of major significance
- (vii), display of her work in the field at artistic exhibitions or showcases
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation
- (ix), high remuneration for services

The Director concluded the Petitioner met one criterion pertaining to the display of his work in the field at artistic exhibitions or showcases. We will not disturb the Director’s determination regarding the Petitioner’s display of his work. On appeal, the Petitioner does not pursue his initial claim that he meets the criteria relating to high remuneration for services, nor does he contest the Director’s conclusions regarding this issue. We therefore consider this issue abandoned.¹

After reviewing all the evidence in the record, we agree with the Director that the Petitioner has satisfied the display criteria, but he also satisfies one additional category of evidence of published material about the individual in professional or major media. The Petitioner has therefore satisfied two criteria and must satisfy one more to prevail. As discussed below, we conclude he has not.

¹ *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

A. Evidentiary Criteria

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In order to satisfy this criterion, the Petitioner must demonstrate that he has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was for excellence in the field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

The Director determined that the Petitioner did not establish that any of the awards qualify as nationally or internationally recognized prizes or awards for excellence in the field. We agree with that determination.

On appeal, the Petitioner reiterates that he was awarded the 2019 [REDACTED] Fellowship. The Petitioner further explained that the [REDACTED] is the only dedicated [REDACTED]

art and foster the artists who create it. In a letter by the executive director of the museum, the author explained that the 10 months fellowship is a program “made up of seminars and mentorship services designed to help artists maximize their potential while also engaging in critical discourse.” The Petitioner further states on appeal that this fellowship is an “internationally recognized prize since it has been frequently featured in major art publications such as *Artnet*, which attracts 6.2 million monthly website visitors.” However, the record does not contain any additional information or supporting evidence regarding the competition to support the Petitioner’s claim that his selection for this fellowship should be considered a nationally or internationally award for excellence in the field of visual art. For example, the Petitioner did not provide sufficient documentation on the process of how individuals are selected and awarded the fellowship, and information regarding the individuals who determine who is selected for the fellowship. In addition, the record does not contain official results or other evidence demonstrating the number of entrants in the competition in the year he was awarded the fellowship.

The Petitioner also did not provide sufficient evidence of the level of recognition associated with this award. On appeal, the Petitioner claims that this fellowship is internationally recognized because it has been featured in major art publications. While the fellowship may receive media attention, the record lacks sufficient evidence verifying that this fellowship is a nationally or internationally recognized award for excellence in the field, or evidence that the Petitioner himself received any recognition from outside the issuing organization. Even if the media attention evidences national or international recognition, the Petitioner did not provide sufficient evidence to establish whether the

² See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions: Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

³ *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

award itself is nationally or internationally recognized and awarded for excellence in the field of visual arts.

Although the Petitioner does not discuss any other awards on appeal, a review of the awards discussed in the initial petition also do not contain sufficient evidence regarding the rules and selection process for granting the awards, official results for the entire competition, the number of competitors and prize winners in each age and category, or other evidence related to the specific category in which he received an award. Further, the Petitioner did not provide sufficient evidence to determine that the Petitioner's awards for the noted competitions are a nationally or internationally recognized prize or award for excellence in the field of visual arts.

For the reasons stated above, the Petitioner does not meet this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁴

The Petitioner contends that he satisfies this criterion since he was featured in several articles published in major media. On appeal, he specifically discusses an article published by *The Advocate*, and states it is a publication with 2.04 million monthly website visitors. The Petitioner submitted a printout from *The Advocate*'s website indicating that on [REDACTED] 2021, the Petitioner was profiled in an article entitled, [REDACTED] This piece reviewed the Petitioner's exhibit, [REDACTED] and his journey as an artist. The Petitioner also submitted, among other articles, an article from *The New York Times* discussing his artwork and the work of other contemporary artists. The piece discusses an individual that will donate 150 pieces of artwork, including the Petitioner's art, as part of the donated collection. The Director determined that the article was not specifically published material about the Petitioner. However, the submitted evidence reflects that the Petitioner was one of a few artists featured in a major publication in a populous city known for its abundance of artists, and these individuals were singled out to express their experience through their art during prominent events such as exhibits and a donation of an important art collection. The evidence of record meets the plain language of this criterion, and we will withdraw the Director's conclusion on this specific matter.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and rise to the level of major significance in the field as a whole, rather than having major significance to a project or to an organization. See *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022)(citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The Petitioner claims to have made original contributions in the field of visual arts and submitted letters of support and articles in support of this assertion. In denying the petition, the Director determined that the testimonial evidence did not establish that he has made original contributions of major significance in the field. On appeal, the Petitioner contends the Director "overly generalizes based on randomly chosen and cherrypicked sentences from some letters submitted" and overlooks documentary evidence such as press articles. For example, the Petitioner states that an article from *Culbytes*, an online art and culture news publication, published an article highlighting the originality and innovative nature of the Petitioner's art. The Petitioner emphasized that the article indicated he has his own [REDACTED] and is authentically creating original art using [REDACTED]. The Petitioner further states that he submitted several articles published in major media that described his artwork as innovative, inventive, original and unique.

Upon review of the record, the authors of the letters and articles submitted with the petition attest to the talent of the Petitioner, but do not provide specific examples of how the Petitioner's methods or techniques have influenced the work of other visual artists, or otherwise equate to original contributions of major significance in the field. Also, the submitted documentation does not include an explanation as to how the Petitioner's choice of methods differs from that of other visual artists. The plain language of this regulatory criterion requires that the Petitioner's contributions be "of major significance in the field" rather than limited to the person he teaches or mentors or personally purchases his art. See *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Although we acknowledge the achievement of articles published regarding the Petitioner's artwork and its originality, what is lacking is the Petitioner's account of how that equates to this criterion's requirements. While the Petitioner submits letters of support and articles discussing the Petitioner's work as original and inventive, it does not necessarily mean that his valued art has significantly contributed to the field as a whole. See generally 6 USCIS Policy Manual, *supra*, F.2 (Appendices); see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of major significance.

The Petitioner did not establish that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

Even considering the Petitioner's appellate claims under this criterion, we still conclude he has not shown that his work has resulted in a marked impact within the field. In the end, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role was for an organization or establishment (or a division or department of an organization or establishment) with a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help establish whether a role is or was, in fact, leading. *See generally* 6 USCIS Policy Manual F.2(B)(2)(Appendices), <https://www.uscis.gov/policymanual>. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally id.* (citing to the definition of *distinguished*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/distinguished>). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, the Petitioner does not provide additional evidence to overcome the Director's decision and instead contends throughout his career he performed a critical role as a visual artist and board member for [REDACTED]. On appeal, the Petitioner submits a letter from [REDACTED] Chairperson of [REDACTED] Mr. [REDACTED] explained that he has known the Petitioner since childhood since he is his son's best friend and he invited the Petitioner to work with [REDACTED] [REDACTED] Art Fair during his summer breaks from college. He explained that for nearly a decade, the Petitioner worked as an "Editor of the Fair" where he oversaw its quarterly magazine and written material for public programming; oversaw keynote presentations, presentation and catalogues for the New York Times [REDACTED] "running point" for the partnership with the [REDACTED] gave a speech at an event for [REDACTED] and, lead the Photography Advisory Board. Mr. [REDACTED] stated that his duties on the Board include, "helping curate a selection of contemporary photography artists to be highlighted in a special exhibition at the fair, inviting photography-specific art galleries to participate in the fair, and overseeing the fair public programming with regards to speakers from photography institutions."

Upon review of the letter from the chairperson of [REDACTED] the author provided a brief and general explanation of the Petitioner's duties in his roles working with the Art Fair. The Petitioner did not provide sufficient documentation to establish he played a critical role in an organization. For example, the documentation does not establish that he performed a critical role for an organization as a whole, such as by showing he influenced its overall reputation or status, or that he was responsible for the organization's success. Nor does the letter show that the Petitioner played a critical role as the letters primarily contain bare assertions of acclaim and vague claims of contributions without specifically

identifying contributions and providing specific examples of how those contributions were critical to the success of [redacted]. While the Petitioner worked on projects to enhance [redacted] programs, and thereby supported its mission, he did not provide sufficient documentary evidence to show that his duties and responsibilities were critical to the greater organization. The letter does not describe with sufficient detail how the Petitioner himself played a critical role in the successes [redacted] enjoyed. Every employee fulfills some kind of role that benefits their employer in some way. Here, the Petitioner has not established that his work for [redacted] was critical to the organization itself, rather than to the outcome of specific, limited tasks or projects.

For these reasons, the Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.⁵

Nevertheless, we have reviewed the record in the aggregate and concluded that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). See also *Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

⁵ See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.